

BEFORE THE  
COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

**BILL 16-80:  
THE “PROSTITUTION-RELATED NUISANCE ABATEMENT  
AMENDMENT ACT OF 2005”**

**BILL 16-396:  
THE “ADMINISTRATIVE SEARCH OF DRUG-RELATED PROPERTIES  
AMENDMENT ACT OF 2005”**

and

**BILL 16-397:  
THE “DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
NUISANCE PROPERTY CEASE AND DESIST CLARIFICATION  
AMENDMENT ACT OF 2005”**



Testimony of

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October 6, 2005

Good afternoon Chairperson Graham, members of the Committee, and other Members of the Council who are present today. My name is David Rubenstein and I am the Deputy Attorney General for Public Safety in the Office of the Attorney General for the District of Columbia. I appreciate the opportunity to comment today on the three bills pending before the Committee.

First, however, I want to thank you, Chairman, for your leadership on these issues, which are so important to our neighborhoods. Not only do I see and hear the frustration of citizens in my work, but as a resident of the District I am profoundly aware of the impact that nuisance properties, of all kinds, have on quality of life. From vacant and blighted properties, to illegal construction, to drug and prostitution-related nuisances -- these are problems that affect quality of life and safety. So, on behalf of the Attorney General, I want to thank you for your efforts to provide us with the additional tools that we need to address these problems.

Mr. Chairman, in light of OAG's prior testimony on Bill 16-80, and the subsequent correspondence between you and me regarding that bill, I would simply ask the Committee to incorporate my letter dated June 16, 2005 as part of the ongoing record. However, in the interest of time, I will not take further time today to address that piece of legislation. As you know, we support the inclusion of prostitution-related nuisances within the existing Drug-Related Nuisance Abatement Act.

I would like to turn my attention to Bill 16-397, the "Department of Consumer and Regulatory Affairs Nuisance Property Cease and Desist Clarification Amendment Act of 2005." The Office of the Attorney General supports this proposed re-codification of the cease and desist provision in order to make it applicable to the entirety of chapter 28 of title 47 of the D.C. Code. We would note, however, that in moving the provision as proposed, it would appear that a criminal prosecution for violation of a cease and desist order issued under chapter 28 would be

controlled by Sections 47-2845 and 47-2846, instead of sections 47-2853.27 and 47-2853.28 of the D.C. Code. I believe this would have the unintended effect of reducing the potential criminal penalty from up to one year incarceration and \$10,000 for a first conviction, and one year and \$25,000 for a second or subsequent conviction, to 90 days and/or \$300 (see D.C. Code § 47-2846). We would therefore urge the Committee to amend bill 16-397 to include the higher criminal penalties, as contained § 47-2846 of the Code. In addition, it appears that criminal sanctions for violations of the provisions of chapter 28 are only available in the alternative, but not in addition, to civil sanctions. We would urge the Committee to make criminal penalties available, in addition to civil, throughout chapter 28.

In addition, OAG supports the language in bill 16-397 that would require service of a copy of a cease and desist order on the holder of a certificate of occupancy, or the owner of record, where these persons or entities are different from the alleged violator. This will be a useful tool in any future cases that might arise against the owner or holder of a certificate in which they might have otherwise claimed that they were unaware of unlawful conduct occurring on the premises. Moreover, it will hopefully serve as an opportunity for the owner or holder of the certificate to take immediate action to address the nuisance before his or her own interests are in jeopardy. Additionally, OAG would recommend one technical amendment to Section 2 of the bill. We would suggest replacing the term “licensee” in proposed Section 47-2844.01(a)(2) with the phrase “alleged violator.”

Finally, in regard to bill 16-397, while we appreciate the Committee’s desire to empower the Attorney General to utilize the Drug Related Nuisance Act, we do not believe that Section 3 of the bill is the best way to affect that outcome. Instead, I would refer the Committee to my June 16<sup>th</sup> letter to you, Mr. Chairman, in which I discussed, among other things, the substantial

resource limitations that inhibit greater enforcement by my Office. I will not belabor this point, except to say that we are sorely understaffed to handle the overwhelming number of affirmative civil and criminal prosecutions that we already initiate each year. With the proper resources, we would be pleased to take a more active role in this and many other areas.

Aside from the critical need for resources, there are a couple of additional tools that would likely make our authority under the Act more meaningful:

First, the Attorney General does not currently have investigatory subpoena powers to enforce the breadth of civil or criminal offenses under our jurisdiction. While I understand that this Committee cannot remedy that problem across the board, we would encourage the Committee to grant specific subpoena authority to the Attorney General under the Drug (and Prostitution) Related Nuisance Abatement Act. There are a handful of provisions within the Code that could serve as examples for such authority here.

Second, we would strongly support strengthening the language under the Drug-Related Nuisance Abatement Act that allows the plaintiff to seek a protective order. This is critical not only to ensure the safety, cooperation, and identity of non-law enforcement witnesses, but also to ensure the integrity of any criminal investigation.

In reference to both of these suggestions, we would be happy to work with the Committee and the Office of the United States Attorney on proposed language.

Finally, I would like to spend a moment addressing Bill 16-396 the “Administrative Search of Drug-Related Properties Amendment Act of 2005.” If the purpose of this legislation is to provide a specific mechanism for administrative searches of suspected drug or prostitution-related nuisance properties, it may raise Constitutional concerns because, in the context of drug (and prostitution) nuisance properties, what is ultimately being sought is, by definition, evidence

of a crime. Therefore, as it relates to enforcement of the drug (and prostitution) related nuisance provision, such a warrant would likely be impermissible and a criminal search warrant would instead be necessary. *See Michigan v. Clifford*, 464 U.S. 287, 294 (1984). However, if the purpose of Bill 16-396 is broader, such as to establish a statutory standard for administrative warrants more generally, where evidence of a crime is not the object of the search, we would be pleased to work with the Committee on any changes that would best achieve that goal.

Again, I appreciate the opportunity to testify.